

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
PATRICIA LOUISE WILSON,) CASE NO. 05-69164 JPK
) Chapter 7
Debtor.)

ORDER DENYING MOTION TO RECONSIDER DISMISSAL

On November 4, 2005, the Court entered an order dismissing the debtor's case due to non-compliance with the Court's order of October 20, 2005. On November 15, 2005, the debtor, by counsel, filed a Motion to Reconsider Dismissal.

The Court's order of October 20, 2005 specifically brought to the attention of the debtor's counsel the fact that no copy of the originally signed petition signature page had been filed of record with the Court, in contravention of the requirements of paragraph 11(c) of the Fifth Amended Order Authorizing Electronic Case Filing. The record establishes that a copy of the October 20, 2005 order was electronically served upon the debtor's counsel. Despite the fact that pursuant to the October 20, 2005 order, the petition could have been stricken within three days of the date of entry of that order, the Court waited to provide counsel with additional time to file the required document, and thus the order striking the petition, and as a consequence dismissing the case, was not entered until November 4, 2005.

The most critical document with respect to the initiation of a case under the Bankruptcy Code is a petition. As stated in 11 U.S.C. § 301, a voluntary case "is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter". Fed.R.Bankr.P. 9009 provides: "The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. . . . The forms shall be construed to be consistent with these rules and the Code." Official Form No. 1, the form of voluntary petition applicable with respect to this case, requires

the Signature of the Debtor. The Court's Fifth Amended Order Authorizing Electronic Case Filing provides the manner in which the signature of the debtor is to be evidenced on a petition: paragraph 11(c) of that order provides that the signature upon a petition is to be indicated by the submitting of a scanned copy of the originally signed document, attaching a scanned copy of the originally signed signature page to the electronically filed petition, or separately submitting a scanned copy of the originally signed signature page immediately after the electronic filing of the signed document. All of these procedures contemplate, as does Official Form No. 1, that when the petition is filed, it has actually been signed by the debtor. Absent a signature page of record, there is absolutely no manifestation to the Court or to any other party in interest that the case has been validly initiated by the person on whose behalf it is represented to have been filed.

The Motion to Reconsider Dismissal appears to assert that the required signature page was filed on October 18, 2005. It was not. Docket record entry #3 is in fact a set of signature pages; however, the signature page for the petition is not among them. The receipt attached to the motion is not, as counsel seems to suggest, a declaration of what in fact is in the Court's record, but rather only an acknowledgment that a transmission described by the transmitting party was received. The debtor's counsel in this instance originated and transmitted the "Docket Text" which appears in the receipt, and whatever was in fact in that transmission is what the record itself establishes.

The debtor's Motion to Reconsider Dismissal is deemed by the Court to be a motion pursuant to Fed.R.Bankr.P. 9024, which thus brings into play the provisions of Fed.R.Civ.P. 60(b). Under this rule, the debtor has the burden of establishing one of the grounds provided in Rule 60(b): the Court finds that the record in this case fails to establish any grounds upon which the debtor may prevail. The October 20, 2005 order was noticed to the debtor's counsel, and ample time – in excess of that provided by that order – was accorded by the Court for

compliance with that order. The document required by that order – a signed copy of the signature page of the petition – was not in fact filed of record until November 15, 2005.

IT IS ORDERED that the foregoing Motion to Reconsider Dismissal is denied.

Dated at Hammond, Indiana on November 30, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor, Trustee, US Trustee